

**From:** [LERS, EOIR \(EOIR\)](#)  
**To:** [All of Judges \(EOIR\)](#); [BIA BOARD MEMBERS \(EOIR\)](#); [Slutman, Robin M. \(EOIR\)](#); [BIA ATTORNEYS \(EOIR\)](#); [All of OCIJ JLC \(EOIR\)](#); [BIA TEAM JLC](#); [BIA TEAM P \(EOIR\)](#); [King, Jean \(EOIR\)](#); [Alder Reid, Lauren \(EOIR\)](#); [Berkeley, Nathan \(EOIR\)](#); [Korniluk, Artur \(EOIR\)](#); [Cowles, Jon \(EOIR\)](#); [Bauder, Melissa \(EOIR\)](#); [Vayo, Elizabeth \(EOIR\)](#); [Kaplan, Matthew \(EOIR\)](#); [Lang, Steven \(EOIR\)](#); [Ramirez, Sergio \(EOIR\)](#); [Powell, Karen B. \(EOIR\)](#); [Taufa, Elizabeth \(EOIR\)](#); [Lovejoy, Erin \(EOIR\)](#); [Rodriguez, Bernardo \(EOIR\)](#); [Brazill, Caitlin \(EOIR\)](#); [Wilson, Amelia \(EOIR\)](#); [Sheehey, Kate \(EOIR\)](#)  
**Cc:** [McHenry, James \(EOIR\)](#); [Reilly, Katherine \(EOIR\)](#); [Santoro, Christopher A \(EOIR\)](#); [Adams, Amanda \(EOIR\)](#); [Pease, Jeffrey \(EOIR\)](#); [Morgan, Kenosha \(EOIR\)](#); [EOIR Library \(EOIR\)](#); [Moutinho, Deborah \(EOIR\)](#); [LERS, EOIR \(EOIR\)](#)  
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**EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW**  
Office of Policy | Legal Education and  
Research Services Division

| Policy & Case Law Bulletin  
February 16, 2018

**Federal Agencies**

DOJ

- [BIA Issues Amicus Invitation No. 18-02-14 — EOIR](#)  
Issues presented: (1) Whether DHS can establish removability by charging an alien as an aggravated felon under two separate aggravated felony definitions, neither of which would independently be a categorical match to the statute of conviction, if all means of violating the statute fall within at least one of the charged aggravated felony definitions; (2) Whether all means of violating New York Penal Law § 155.05 would meet the definition of an aggravated felony as defined in either section 101(a)(43)(G) OR section 101(a)(43) (M) of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(43)(G), (M), and if so, under which definition of aggravated felony would each subsection of NYPL § 155.05(02) fall.
- [Virtual Law Library Weekly Update — EOIR](#)  
This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.
- [Department of Justice Proposes Budget for FY 2019, Including for EOIR](#)  
The proposed budget allocates an additional \$65.9 million towards immigration-related program enhancements, including hiring additional Immigration Judges and support staff, and updating EOIR's technology.

DHS

- [USCIS Updates Guidance in Response to February Preliminary Injunction on DACA](#)  
In response to a [preliminary injunction](#) issued on February 13, 2018 by the U.S. District Court for the Eastern District of New York, USCIS updated its [web guidance](#) regarding implementation of DACA policy. USCIS stated that the preliminary injunction was the same in scope as an earlier preliminary injunction issued on January 9, 2018 in the Northern District of California.

DOS

- [DOS Posts March 2018 Visa Bulletin](#)  
The Visa Bulletin includes a summary of available immigrant numbers, visa availability, and scheduled expiration of visa categories.

## First Circuit

- [Rosa v. Sessions](#)

No. 17-1310, 2018 WL 852080 (1st Cir. Feb 14, 2018) (CIMT)

The First Circuit granted the PFR and remanded, concluding that the Board had not sufficiently explained why the least culpable conduct proscribed by petitioner's statute of conviction, Mass. Gen. Laws ch. 266, § 2 ("Massachusetts Arson"), is morally turpitundinous, or why the statute's required mens rea of "malice," which Massachusetts case law has determined does not require evil intent or a corrupt mindset, qualifies the statute as a CIMT.

- [Villalta-Martinez v. Sessions](#)

No. 17-1201, 2018 WL 746091 (1st Cir. Feb. 7, 2018) (Asylum – Nexus)

The First Circuit denied the PFR, concluding that the petitioner did not establish a nexus between her past persecution by gang members in El Salvador and her proposed social group, her family relationship to the father of her child. The court agreed with the Board's finding that "there is insufficient evidence in the record to demonstrate that the gang members were or would be motivated to harm [the petitioner] for any other reason than to extort money from her."

## Second Circuit

- [Tobar-Bautista v. Sessions](#)

No. 16-4229, 2018 WL 798469 (2d Cir. Feb. 9, 2018) (unpublished) (COR)

The Second Circuit granted the PFR, concluding that the IJ erred as a matter of law by misapplying the cancellation of removal hardship standard by not considering all hardship factors in the aggregate, overlooking certain key evidence, and mischaracterizing other pieces of evidence.

## Fourth Circuit

- [Salgado-Sosa v. Sessions](#)

No. 16-1594, 2018 WL 826764 (4th Cir. Feb. 13, 2018) (Nexus; Changed Circumstances)

The Fourth Circuit granted the PFR in part and remanded, concluding that the petitioner was eligible for withholding of removal because he showed the required nexus between his anticipated persecution by the MS-13 gang and his membership in a particular social group consisting of his family. The court remanded to the Board for further proceedings in light of *Zambrano v. Sessions*, 878 F.3d 84 (4th Cir. 2017) (determining that the "intensification" of a preexisting threat of persecution may qualify as a changed circumstance excusing an untimely asylum application).

## Fifth Circuit

- [Nunez v. Sessions](#)

No. 16-60140, 2018 WL 777173 (5th Cir. Feb. 8, 2018) (In absentia - Notice; MTR - CCC)

The Fifth Circuit denied the PFR, concluding that the petitioner received proper notice of her hearing in removal proceedings, where notice was sent via regular mail

to the address she provided, but was returned at the request of an unidentified person. The court also held that the petitioner's motion to reopen based on changed country conditions was properly denied because she did not show a material rather than incremental change in country conditions.

### Seventh Circuit

- [Bernard v. Sessions](#)

No. 17-2290, 2018 WL 777172 (7th Cir. Feb. 8, 2018) (CAT)

The Seventh Circuit denied the PFR, concluding that substantial evidence supports the IJ's denial of CAT relief because "neither [the petitioner's] decades-old experiences (which did not themselves amount to torture and, indeed, did not even involve [the petitioner] directly) nor the general reports of violence [against the LGBT community] in Jamaica were sufficient to show that he specifically would be targeted for extreme violence in the future." The court also held that petitioner's CAT claim based on his political affiliation was "too speculative" to justify deferral of removal.

### Eleventh Circuit

- [United States v. Mitchell](#)

No. 17-12861, 2018 WL 834195 (11th Cir. Feb. 13, 2018) (unpublished) (Crime of Violence)

The Eleventh Circuit affirmed the district court's judgment, concluding that the petitioner's conviction in violation of Ala. § 13A-6-21(a)(2) (second-degree assault) qualifies as a violent felony under the ACCA, 18 U.S.C. § 924(e)(2)(B)(i) (same as 18 U.S.C. § 16(a)), after concluding that the Alabama statute of conviction is divisible and applying the modified categorical approach to determine that the petitioner was convicted of "intentionally [causing] physical injury with a deadly weapon, by shooting the victim in the head with a gun."